



SOWELL GRAY STEPP & LAFFITTE, LLC
ATTORNEYS AND COUNSELORS AT LAW

June 30, 2004

VIA HAND-DELIVERY:

The Honorable Bruce Duke
Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: SC PSC Docket Nos. 2003-326-C & 2003-327-C
SGS&L File No. 5671/1500

Dear Mr. Duke:

CompSouth is in receipt of the letter from BellSouth to the Commission of June 18, 2004 addressing the impact of the June 16, 2004 mandate issued by the D.C. Circuit Court of Appeals in *United States Telecom Ass'n v FCC* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"). In that letter, BellSouth states its commitment to honor its existing contractual obligations regarding the provision and pricing of unbundled network elements contained in its interconnection agreements until those agreements have been amended pursuant to the "change of law" provisions contained in those agreements. These were the commitments from BellSouth that CompSouth sought in its Petition for Emergency Declaratory Ruling filed with this Commission on May 27, 2004. Hence, it appears that the "emergency" nature of that Petition has been abated.

Robert E. Tyson, Jr.
rtyson@sowell.com

BellSouth's June 18, 2004 letter further references the commitment made to Chairman Powell and the FCC on June 10, 2004 (a copy of which is attached) in which Mr. Ackerman stated that "BellSouth will not unilaterally increase the prices it charges for mass market UNE-Platform or high capacity loop or transport UNEs before January 1, 2005 for those carriers with current interconnection agreements." BellSouth makes much of this commitment and states "[n]otwithstanding rhetoric from certain CLECs to the contrary, this orderly transition should not result in any consumer paying higher prices for telephone service." What BellSouth does not indicate, however, is whether it will attempt, after January 2005, to collect some form of a retroactive "true-up" or other additional charge for UNE-P or high capacity loops or transport purchased during the period between June 10 and December 31, 2004; nor does BellSouth offer any assurances with respect to the meaning or effect of its caveat regarding "mass market" UNE-P lines. Any increase in rates imposed by BellSouth would require

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the CLECs to seek to recover such rates from its customers and, contrary to BellSouth's assertion, would in fact result in consumers paying higher prices for telephone services. If these are BellSouth's intentions, then BellSouth's commitment to Chairman Powell and this Commission is no commitment at all. CompSouth requests that the Commission obtain a further commitment from BellSouth that it will not seek any retroactive increase in the rates paid for UNEs provided before January 1, 2005.

CompSouth also disagrees with BellSouth's assertion that amendments to its interconnection agreements to implement the *USTA II* mandate simply represent "ministerial" changes. As an initial matter, there does not appear to be agreement as to what elements are affected by issuance of the *USTA II* mandate. BellSouth has continued to state that the *USTA II* decision eliminated its obligation to provide high capacity loops. But this assertion cannot become true by dint of repetition. The *USTA II* decision very clearly states that the Court only vacates and remands the FCC's nationwide impairment determinations concerning "mass market switching and certain dedicated transport elements (DS1, DS3, and Dark Fiber)". There is no order from the *USTA II* Court that vacates the FCC's rules regarding the unbundling of high capacity loops. There are also many provisions of the FCC's Triennial Review Order that were not vacated, and these provisions would necessarily be a part of any contract amendment addressing the change of law effectuated by the TRO and *USTA II*. Such provisions include, without limitation, those dealing with commingling and EELs.

In addition, while the *USTA II* vacatur means that there are no current FCC rules regarding BellSouth's obligation to provide certain unbundled network elements under Section 251 of the federal Telecommunications Act of 1996 ("federal Act")), *USTA II* does not rule that any of such UNEs may not be subject to unbundling under either federal or state law. In addition, BellSouth has conceded that it has obligations under the competitive checklist of Section 271 of the Act to provide those network elements to CLECs. The FCC also prescribed in the TRO that the rates for these network elements were to be established under the "just and reasonable" rate setting standard. Interconnection agreement language establishing these contractual obligations and the appropriate rates would also have to be addressed in any negotiations to implement the "change of law" occasioned by the *USTA II* mandate.

In sum, contrary to BellSouth's cavalier assertion that implementing the *USTA II* mandate "is purely ministerial and should not require extensive negotiation", it is clear that there are disputes regarding the meaning and import of the *USTA II* mandate that are likely to require Commission resolution.

June 30, 2004
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Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Tyson, Jr.", with a long horizontal flourish extending to the right.

Robert E. Tyson, Jr.

RET/alh

Enclosure

cc: all parties of record via e-mail

BELLSOUTH

BellSouth Corporation
Suite 2000
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Atlanta, GA 30309-3610

F. Duane Ackerman
Chairman and
Chief Executive Officer

404 249-4020

June 10, 2004

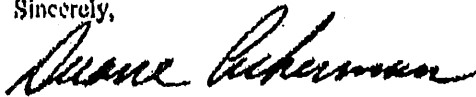
The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12 Street, S. W.
Washington, DC 20554

Dear Chairman Powell:

I write to affirm our commitment to ensure an orderly transition for consumers and carriers away from the Commission rules scheduled to be vacated on June 15, 2004. Replacing those rules with an approach that recognizes the dynamism of today's telecommunications markets and technology will provide the greatest possible benefits to consumers and the economy. To ensure an orderly transition, BellSouth will not unilaterally increase the prices it charges for the mass market UNE-Platform or high-capacity loop or transport UNIs before January 1, 2005 for those carriers with current interconnection agreements.

BellSouth has already reached several agreements with carriers that provide for a UNE-Platform replacement with no price increase for the remainder of this year and modest staged increases over the next three years. We have also reached agreements with carriers to transition from high-capacity loop and transport UNEs to other arrangements. Over the next several months, we plan to intensify our efforts with other carriers to develop mutually beneficial commercial solutions to move the industry forward. We trust in your continued support for these efforts.

Sincerely,



Copy to: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein